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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,901	06/24/2003	Alfio Fabrizi	FR920020082US1	2182
54462 : 7590 01/04/2007 OJANEN LAW OFFICES LTD. 2665 RIVERSIDE LANE NE ROCHESTER, MN 55906-3456			EXAMINER SAEED, USMAAN	
			ART UNIT 2166	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/04/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/602,901	<b>Applicant(s)</b> FABRIZI ET AL.	
	<b>Examiner</b> Usmaan Saeed	<b>Art Unit</b> 2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☒ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of Applicant's Amendment, filed on 9/29/2006 is acknowledged. Claims 1-18 have been cancelled. New claims 19-53 have been added.

### ***Priority***

2. The mailing certificate for a certified copy of application has been received, however the certified copies of application 02368142.2 is not present in the PTO system, therefore applicant is requested to resubmit the certified copies of foreign application 02368142.2 filed in EPO on 12/19/2002.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-53 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. The language of the claims raises a question as to whether the claims are directed merely to an environment or machine which would result in a practical

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application producing a concrete useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claims 19-53 are rejected because they do not recite a practical application by producing a physical transformation or producing a useful, concrete, and tangible results. To perform a physical transformation, the claimed invention must transform an article of physical object into a different state or thing. Transformation of data is not a physical transformation. A useful, concrete, and tangible results must be either specifically recited in the claim or flow inherently therefrom. To be useful the claimed invention must establish a specific, substantial, and credible utility. To be concrete the claimed invention must be able to produce reproducible results. To be tangible the claimed invention must produce must produce a practical application or real world result.

To expedite a complete examination of the instant application the claims rejected under U.S.C. 101 (nonstatutory) above are further rejected as set forth below in anticipation of application amending these claims to place them within the four categories of invention.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 19-25, 27-30, 33-42, and 45-53 are rejected under 35 U.S.C 102(e) as being anticipated by **Bottom et al. (Bottom hereinafter)** (US PG Pub 2003/0069953).

With respect to claim 19, **Bottom** teaches a **system for configuring a highly-available data processing system, comprising:**

**“an inspection agent adapted to:**

**automatically explore and inspect a production server”** as figure 4, reference numerals 405 and 410 (**Bottom** Figure 4).

**“identify and collect a plurality of production server computer parameters”** as figure 4, reference numeral 410 (**Bottom** Figure 4).

**“generate a production server computer parameter database of the production server computer parameters necessary to configure the production server to be the highly-available data processing system”** as according to one embodiment, health and performance monitoring is performed by extracting each server module's health and performance metrics, which are stored in a local database. Such health and performance metrics are made available for various applications, such as a graphical user interface (GUI) and a web-server interface (**Bottom** Paragraph 0020 & 0029).

**“an expert-system module adapted to:  
read the production server computer parameter database”** as figure 4,  
reference numeral 410 (**Bottom** Figure 4).

**“generate a project database comprising the production server computer parameters, a plurality of default questions and a plurality of additional questions, if any, and the respective production server computer parameters derived from the answers used to define the highly-available data processing system”** as information that is static in nature, such as serial number of the device plugged in, chassis ID number of the chassis in which the device is plugged into, or slot ID number in the chassis in which the device is plugged into, may only be extracted from the in-memory database 525 once or whenever necessary, and saved for future reference. Dynamic information, such as temperature level, power level, or CPU utilization, on the other hand, may be extracted periodically or whenever necessary. The middleware 535 may store the information in a memory database 525 (**Bottom** Paragraph 0055). The project database/database 525 stores the parameters and questions and answers related to the parameters such as level of temperature, power and CPU utilization.

Further **Bottom** teaches that with predetermined performance and health thresholds, the information extracted by the middleware 535 may help determine whether any of the thresholds are being violated (**Bottom** Paragraph 0056). Examiner interprets determining if any of the thresholds are violating predetermined performance and health thresholds as additional questions.

**“select from a plurality of predefined rules those rules pertinent to analyze the project database; and define the highly-available data processing system from the production server computer parameter database”** as (Figure 4 and Paragraph 0050).

With respect to claim 20, **Bottom** teaches **“the system for configuring a highly-available data processing system of claim 19 further comprising a user-interactive module by which to display the project database to a user”** as the middleware 535 may provide these metrics to be stored in a local database 525, and at the same time may make the database of metrics available to higher level applications including graphical user interface (GUI) and web-server interface 520 (**Bottom** Paragraph 0054).

With respect to claim 21, **Bottom** teaches **“the system for configuring a highly-available data processing system of claim 20 wherein the user-interactive module further comprises a menu by which a user may enter additional answers to the questions and additional information to the project database to define the highly-available data processing system”** as the HA management system 100 may provide for the users to define low and high-alert thresholds and propagation of health and performance alerts, and the users may also define the intervals at which the system performance and utilization metrics are computed (**Bottom** Paragraph 0034).

With respect to claim 22, **Bottom** teaches “**the system for configuring a highly-available data processing system of claim 20 wherein the user-interactive module permits a user to select the computer parameters defining the highly-available data processing system**” as the HA management system 100 may provide for the users to define low and high-alert thresholds and propagation of health and performance alerts, and the users may also define the intervals at which the system performance and utilization metrics are computed (**Bottom** Paragraph 0034).

With respect to claim 23 and 24 **Bottom** teaches “**wherein the expert system client-side module determines and selects additional questions that require answers in order to analyze the project database and wherein the expert system client-side module automatically inspects the project database to determine answers to the additional questions**” as predetermined performance and health thresholds, the information extracted by the middleware 535 may help determine whether any of the thresholds are being violated (**Bottom** Paragraph 0056). Examiner interprets determining if any of the thresholds are violating predetermined performance and health thresholds as additional questions.

With respect to claim 25 **Bottom** teaches “**wherein the computer processing parameters to define the highly-available data processing system comprise one or more of the following: names of one or more computer processing machines, types of the one or more computer processing machines, operating systems of**



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**the one or more computer processing machines, mass-storage connected to the one or more computer processing machines, magnetic tape storage connected to the one or more computer processing machines, a plurality of system values of the one or more computer processing machines, or one or more network attributes of the one or more computer processing machines”** as dynamic information, such as temperature level, power level, or CPU utilization, on the other hand, may be extracted periodically or whenever necessary. The middleware 535 may store the information in a memory database 525 (**Bottom** Paragraph 0055). Examiner interprets Bottoms disclosure as plurality of system values.

With respect to claim 27, **Bottom** teaches “**wherein the computer processing parameters to define the highly-available data processing system comprises one or more user libraries, one or more software objects, or data used by the production server”** as the HA management system 100 may provide for the users to define low and high-alert thresholds and propagation of health and performance alerts, and the users may also define the intervals at which the system performance and utilization metrics are computed (**Bottom** Paragraph 0034). Examiner interprets the health and performance data as data used by production server.

With respect to claim 28, **Bottom** teaches “**wherein the computer processing parameters to define the highly-available data processing system comprises one or more user programs that exploit operating system commands relevant to the**

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**highly-available data processing system”** as according to one embodiment, the infrastructure may require a dedicated development server 186 to facilitate installation and configuration of operating system, services, and applications on its production servers (Bottom Paragraph 0039).

With respect to claim 29 and 30, Bottom teaches **“wherein the expert system client side module further generates and implements one or more recommendations or corrective actions to define the highly-available data processing system”** as according to one embodiment of the present invention, a server in the chassis is automatically elected as a managing server or active server to host system management. The active server runs service for all servers operating in the chassis. Upon failure of the managing server, such as when not meeting a certain predetermined criteria, another server is elected as active server to replace the previous active server to continue with the management of the chassis and remaining servers (**Bottom** Paragraph 0019).

Groups of claims 33-38, 39-41, 45-46 and 47-53 are essentially the same as group of claims 19-25, and 27-30 except they set forth the claimed invention as an apparatus, a method and a program product and are rejected for the same reasons as applied hereinabove.

With respect to claim 42, **Bottom** teaches **“the expert-system client side software agent automatically generating a report of the analysis of the plurality of computer parameters using the expert knowledge database”** as each server module or blade 510 may run an application or service, which via hardware device driver may communicate with the management device 515 and the operating system 545 to report health and performance metrics on each of the modules 510 (**Bottom** Paragraph 0053).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 26, 31-32, and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bottom et al.** (US PG Pub 2003/0069953) as applied to claims 19-25, 27-30, 33-42, and 45-53 in view of **Han et al.** (**Han** hereinafter) (U.S. PG Pub 2002/0052807).

With respect to claims 26, 31-32, and 43-44 **Bottom** does not explicitly teaches, “**processing system comprises one or more file systems,**” “**wherein project database is relation database,**” “**files structured as XML files**” and “**generating an HTML report.**”

However, **Han** discloses “**processing system comprises one or more file systems,**” “**wherein project database is relation database,**” “**files structured as XML files**” and “**generating an HTML report**” as the dimensions of the database/file system of the web-enabled and IP-based architectures are either predominately static or only awkwardly modified (e.g., using the relational database technology wherein additional databases are mapped into the primary database/file system using a double interaction technique) (**Han** Paragraph 0015). The product definition data 60 is an XML data structure schema, and is designed to be flexible (e.g., can have many optional elements) (**Han** Paragraph 0067). The HyperText Markup Language (HTML) facilitates how documents can be presented on a screen, e.g., as web pages (**Han** Paragraph 0008).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of the cited references because Han's teachings would have allowed Bottom to have easy access to data, data structure schema which is designed to be flexible and to facilitate presentation of data to a user.

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP .

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Usmaan Saeed whose telephone number is (571)272-4046. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (571)272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Usmaan Saeed  
Patent Examiner  
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Leslie Wong  
Primary Examiner

US  
December 23, 2006

A handwritten signature in black ink, appearing to read 'Hosain Alam', written in a cursive style.

**HOSAIN ALAM**  
**SUPERVISORY PATENT EXAMINER**